

REMARKS

Applicant has reviewed and considered the Office Action mailed on August 15, 2003, and the references cited therewith.

Claims 32-49 are amended solely to correct claim numbering. Claims 1-23 and 30-48 are now pending in this application.

The present invention is directed toward preventing undesired content from being displayed if children or other sensitive viewers are present in a viewing area. This is accomplished by detecting people that are present within a viewing volume, and blocking content based on a lowest common denominator type of approach. In other words, if a child is in the room, violent and sexually explicit materials may be blocked.

It is different from the main reference, Williams, cited in the Office Action because Williams only detects a current single user of the system. It has no capability to determine who is present in a viewing volume, and then controlling display of content based on that determination. The present claims provide the elements to do so.

§102 Rejection of the Claims

Claims 1-3, 6-8, 10-11, 13-14, 16-17, 19-21, 30-32, 35-39, 42-43 and 45-48 were rejected under 35 USC § 102(b) as being anticipated by Williams et al. (US 5,977,964). This rejection is respectfully traversed.

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Applicant respectfully submits that the Office Action did not make out a *prima facie* case of anticipation for the following reasons:

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991).

Claim 1 recites: "a user-recognition input device that determines whether an additional user is newly present in a viewing volume having access to the display..." In contrast, Williams is only capable of identifying a single person at a time who is actually interacting with the system, and has no clue that there may be more people in a viewing volume. In fact, the concept of a viewing volume as claimed is totally lacking in Williams. The term, as defined in the application on pages 16 and 17 is:

"Volume 300 represents the volume being monitored by user-recognition input device 208 that determines the users present in volume 300 (i.e., herein, this is also called the "area" being monitored). User 99, for example an adult watching a television program or internet web site suitable only for adults, is in an area (or volume) 301 which can view display 224 and hear speakers 226 as controlled by system unit 201. Monitored volume 300 may or may not be coterminous with viewing volume 301 (in various embodiments, it is desirable to monitor a volume 300 that is outside the viewing volume, e.g., the doorway or hall outside the room, in order to determine when someone is coming; while in other embodiments, it is desirable to repeatedly monitor which persons are present in an audience). User 98, for example a child of tender years unexpectedly enters the room because he cannot sleep. System 200 automatically controls the program content to match a content suitable for the entire audience present, e.g., by blocking the display and audio if the content is not suitable for children."

Thus, it is clear that viewing volume as used in the application is significantly different from anything taught by Williams. The broadest interpretation of Williams is that the system recognizes someone using a microphone. In an "alternate embodiment, a video image of the user of system 100 is scanned using one or more video cameras of system 100. System controller 104 compares the scanned image of the user to pre-stored visual scans of the plurality of possible users and identifies which of the pre-scanned images is closest to the scanned image of the

current user to identify the user.” Col. 11, lines 12-18. It cannot detect all that are present in a viewing volume as recited in the independent claims, it only identifies “the user”.

The concept of an additional user is also lacking in Williams. One cannot interpret a new user as an additional user, as the term “additional user” necessitates that there be more than one contemporaneous user of the system. If two users were to be using the microphone of Williams, it would helplessly switch between different controls for different users as they both spoke, because Williams has no concept of contemporaneous users that is expressly covered in the current claims.

The Examiner, in the Response to Arguments section of the Office Action indicates that “Williams teaches voice recognition where the user speaks into the microphone while at a personal computer, the physical location of the user of Williams would be within the claimed “viewing volume” region.” While such a user would be in the viewing volume, the viewing volume is likely much larger than the area near a microphone. Further, Williams is incapable of detecting multiple users within a viewing volume. Still further, the use of a microphone, and requiring a user to speak into the microphone does not provide the ability to detect someone entering into a viewing volume that does not speak. There is no requirement that a user speak in the currently claimed invention.

Williams also cannot detect someone being newly present in a viewing volume as claimed in claim 1. Many people may be present in the viewing volume having access to the display without Williams having a clue. Thus, Williams clearly lacks this element of claim 1, as it cannot perform the function claimed.

Independent claim 7 further recites that “display is blocked if any present user is not allowed access to the content.” Williams is not capable of this function. It can only block access based on a current single user of the system, not if any present user is not allowed access. It cannot detect more than one present user at any given time.

Claims 30-48 include the term “viewing volume”, and also reference recognizing “all” users or people in that viewing volume. They distinguish for at least the same reasons as the other independent claims. Further, claim 30 makes it clear that the term viewing volume means “where the information is viewable on the display device”. Further, “all people” in the viewing volume are recognized. All people in a viewing volume in Williams are recognized only if they

sign in. Even then, there is no teaching that Williams understands that more than one person may be present at a time. Claims 30-48 also selectively block display if anyone in the viewing volume is not allowed access. Since Williams cannot know who all is in the viewing area, and only blocks based on a current user, this element is also clearly lacking.

At least one element from each of the claims of the present application are not shown, taught or suggested by Williams. As such, a prima facie case of anticipation has not been established and the rejection should be withdrawn.

Applicant respectfully traverses these grounds for rejection and points out that functional language is specifically authorized by *In re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971); *In re Caldwell*, 138 USPQ 243 (CCPA 1963); *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 3 USPQ2d 1766 (Fed. Cir. 1987 ("so that" functional clause of claim renders reference non-anticipating); MPEP § 2173.05(g).

'103 Rejection of the Claims

Claims 4, 12, 18, 22, 33 and 44 were rejected under 35 USC § 103(a) as being unpatentable over Williams et al. (US 5,977,964) in view of Lu et al. (US 5,771,307). The rejection is respectfully traversed. Claims 4, 12, 18, 22, 33 and 44 depend from independent claims that are believed to distinguish Williams. Lu is not cited as providing any of the elements missing from Williams with respect to such independent claims. Thus, these dependent claims are believed allowable and it is requested that the rejection be withdrawn.

Claims 5 and 23 were rejected under 35 USC § 103(a) as being unpatentable over Williams et al. (US 5,977,964) in view of Wachob (US 5,231,494). The rejection is respectfully traversed. Claims 5 and 23 depend from independent claims that are believed to distinguish Williams. Wachob is not cited as providing any of the elements missing from Williams with respect to such independent claims. Thus, these dependent claims are believed allowable and it is requested that the rejection be withdrawn.

Claims 9, 15 and 41 were rejected under 35 USC § 103(a) as being unpatentable over Williams et al. (US 5,977,964) in view of Kipust (US 6,002,427). The rejection is respectfully traversed. Claims 9, 15 and 41 depend from independent claims that are believed to distinguish Williams. Kipust is not cited as providing any of the elements missing from Williams with respect to such independent claims. Thus, these dependent claims are believed allowable and it is requested that the rejection be withdrawn.

Claim 34 was rejected under 35 USC § 103(a) as being unpatentable over Williams et al. (US 5,977,964). The rejection is respectfully traversed. Claim 34 depends from independent claim 30 that is believed to distinguish Williams. Thus, it is believed allowable and it is requested that the rejection be withdrawn.

Claim 40 was rejected under 35 USC § 103(a) as being unpatentable over Williams et al. (US 5,977,964) in view of Ford (US 6,181,364). The rejection is respectfully traversed. Claim 40 depends from independent claim 37 that is believed to distinguish Williams. Ford is not cited as providing any of the elements missing from Williams with respect to such independent claim. Thus, claim 40 is believed allowable and it is requested that the rejection be withdrawn.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612-373-6972) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-0439.

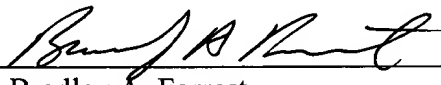
Respectfully submitted,

KEITH C. THOMAS

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6972

Date 12-15-2003

By 
Bradley A. Forrest
Reg. No. 30,837

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 15th day of December, 2003.

Candis B. Buending

Name

Signature

